

Vitro Corporation and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 12-RC-7543

October 30, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (the relevant portion of which is attached). The request for review is denied as it raises no substantial issues warranting review.¹ The Employer's request for a stay of election is also denied.

¹ Review was requested of the Regional Director's findings that: (1) the petitioned-for, single facility unit of warehouse employees is an appropriate unit for collective bargaining; and (2) that the "warehouse leader" is not a supervisor and therefore should be included in the unit. Only the portion of the Regional Director's decision addressing the first issue is attached.

APPENDIX

The Petitioner seeks to represent a unit of the Employer's warehouse employees at King's Bay Submarine Base, including the warehouse leader, excluding the electronics technician, the administrative support technician, the administrative support clerk, and one equipment specialist. Contrary to the Petitioner, the Employer contends that the unit should include the electronics technician, administrative support technician, administrative support clerk, and all equipment specialists who work at the warehouse, should exclude the warehouse leader. The Employer further contends, contrary to the Petitioner, that the unit should include all nonprofessional automatic data processing employees in addition to the warehouse employees. There are approximately 28 employees in the unit Petitioner seeks to represent, 42 employees in the unit the Employer contends is appropriate, and 32 employees in the unit found appropriate.

The record establishes that the Employer is engaged in providing warehouse services, automated data processing (ADP) services, and other support for the Navy at its King's Bay Submarine Base. Pursuant to a single contract with the Navy, the Employer performs the warehousing function plus the related ADP function. Another "umbrella" contract covers the other services performed by the Employer at King's Bay.³ The ADP group is housed in the engineering services building at King's Bay. The warehouse complex is in a separate location.⁴

The Employer's highest ranking official at King's Bay is its senior resident representative. Reporting to him are a

physical distribution operations manager, who heads the warehouse, and a data management/computer operations manager, who heads the ADP group. Reporting to the physical distribution manager are a warehouse foreman, a traffic supervisor, a woodworker foreman, a receipt control supervisor, and an equipment specialist supervisor. Reporting to the data management/computer operations manager are an operations supervisor, a senior system analyst (supervisor/assistant site manager), and a second shift supervisor.⁵ At the warehouse, there are approximately 32 employees working under the warehouse supervisors described above. In the ADP group, there are approximately 22 employees working under the above-described ADP supervisors.

The Employer and the Department of the Navy have categorized the functions performed in the warehouse as storage, traffic, packing and preservation, receipt control, technical, maintenance and repair, and administrative support. More specifically, these functions include receipt and storage of materials; packing and issuance of materials; the movement of materials within the warehouse and outside the warehouse; operation of a ready service "store" ("SWFMart") where office-type supplies are maintained; maintenance of a technical library (a library of manufacturers of parts, parts lists, parts numbers and the like); the collection and storage of hazardous wastes; maintenance and repair of unautomated storage and retrieval system and forklifts; and related reports and paperwork. The warehouse includes an automated storage area and automated bulk storage area. The locations of items in the warehouse are maintained on computers, and computers are used by warehouse employees to, among other things, locate items and to record the receipt of items. While the warehouse is automated to a large extent, the warehouse employees as a group nonetheless perform typical warehouse functions, as demonstrated by the above, as well as by the requirement that they wear steel safety shoes in the warehouse and the fact that approximately 20 of them have forklift operator licenses.

Warehouse job functions are performed by individuals in the job classifications of warehouseman, fork truck operator, material sorter/classifier, "SWFMart" operator, traffic clerk, freight classification specialist, motor vehicle operator, woodworker, preservation packer, hazardous waste coordinator, supply clerk, equipment specialist (hazard equipment specialist, custodial worker, lead equipment specialist, lead supply clerk, material sorter classifier leader, warehouse leader, electronics technician, administrative support technician, and administrative support clerk.⁶

The ADP group's automatic data processing system is the primary keeper for the financial and inventory records of the

⁵ The parties stipulated, and I find, that the senior resident representative, physical distribution operations manager, data management/computer operations manager, warehouse foreman, traffic supervisor, woodworker foreman, receipt control supervisor, equipment specialist supervisor, operations supervisor, senior system analyst (supervisor/assistant site manager), and second shift supervisor are supervisors within the meaning of the Act.

⁶ As indicated earlier herein, the parties are in agreement that employees in all of these classifications, except the warehouse leader, the electronics technician, the administrative support technician, the administrative support clerk, and one equipment specialist, should be included in any unit found appropriate. These disputed classifications will be discussed further below.

³ The parties are in agreement that employees who perform services under the umbrella contract are to be excluded from any unit found appropriate herein.

⁴ The main warehouse building appears to be about 500 feet from the engineering services building.

materials stored in the warehouse. The Employer's senior resident representative testified that about 80 percent of the ADP group's work is directly related to the warehousing and storage functions. The Employer and the Department of Navy categorize the ADP functions as computer operations, systems and analysis, data communications, quality control and statistical analysis, and administrative support. There are 18 job classifications for the approximately 22 non-supervisory employees in the ADP group. These job classifications are programmer (statistical quality control analyst), lead scheduler, scheduler, production control input/output clerk, senior computer operator, computer operator, magnetic media librarian, senior system analyst, lead system software specialist (Unisys), system software specialist (Unisys), lead system software specialist (Tandem), system software specialist, programmer, computer programmer analyst, administrative support technician, telecommunication, specialist (network manager), telecommunications specialist, and ADP trouble desk clerk. The Employer contends that employees in 11 of these 18 job classifications are professional employees,⁷ and presented some evidence that these employees perform work of an intellectual nature and have knowledge of an advanced type.⁸

Duties of ADP employees other than those the Employer contends are professional employees include hanging tapes or disks to maintain the financial and master inventory computer files; cleaning tapes and maintaining tapes that are used for file maintenance; scheduling which will be hung; breaking down reports from computer programs; fielding telephone calls concerning problems with the telecommunications system scheduling repairs; preparation of reports (including reports on workload statistics, internal functions of the ADP, and personnel matters); other clerical work; and generally providing support for the ADP employees the Employer contends are professional employees.

There has been no exchange of supervision between ADP and the warehouse. With respect to nonsupervisory positions, the record reflects only three instances of permanent interchange between the warehouse and the ADP group. Thus in 1988, employee Begonia transferred from the warehouse technical division into the ADP group.⁹ Additionally, the Employer's senior resident representative testified that Elizabeth Roberts and Lori Renew transferred from word processor positions previously located in warehouse to jobs at ADP. These word processor positions no longer exist at the warehouse, but instead have been transferred to the Employer's field office, a facility not involved herein. Documents concerning Roberts appear to indicate that she moved to

ADP in L990.¹⁰ There is no evidence of anyone transferring from ADP to the warehouse.

There is some work related contact between some ADP and some warehouse employees, although for the most part the record does not indicate the frequency of this contact. If there are problems in the warehouse with the telecommunications devices that are part of the data processing system, the telecommunications specialists come to the warehouse to fix the devices. If there are problems with the computer programs, various other ADP employees, all of whom the Employer contends are professional employees, may "interface" with warehouse employees in solving the problems. Some ADP employees have apparently also visited the warehouse in developing computer programs and to do some training of warehouse employees. There was also testimony that the ADP trouble desk clerk answers telephone calls from the warehouse, but it is not clear who would place these calls. The SWFMart is open to departments throughout the base, including ADP; it appears that administrative support technician Roberts is the person from ADP who usually visits the SWFMart. Warehouse drivers (motor vehicle operators) visit the ADP when delivering supplies. Also, in the engineering services building where ADP is located there is a mailroom where someone from the supply section of the warehouse picks up computer-generated reports on a daily basis. The warehouse administrative supply technician or clerk also picks up mail from a mailbox in the ADP building.

ADP employees, like everyone other than warehouse employees, must sign and obtain and wear visitors' badges when visiting the storage areas of the warehouse. Similarly, warehouse employees must sign in before visiting the ADP computer room.

The ADP employees the Employer contends are professional employees and the warehouse electronics technician are all "D" grade employees, who are salaried and do not receive time and half pay for overtime. All of the other warehouse and ADP employees who are in issue, except equipment specialist Huszai, are apparently "G" grade employees who are hourly paid and receive overtime pay.¹¹ Pursuant to the warehouse and ADP contract with the Navy, the Employer has an overall amount of money available for wage increases each year. The Employer's senior resident representative makes wage increase recommendations for both groups to his superior, a vice president at corporate headquarters in Maryland. The same employee benefit programs are available to all employees involved herein.

Personnel records of both ADP and warehouse employees are maintained at the field office. A standard corporate application form is used for all job openings. The supervisor who has a job opening normally conducts an interview in the field

⁷These 11 classifications are programmer (statistical quality control analyst), lead scheduler, senior system analyst, lead system software specialist (Unisys), system software specialist (Unisys), lead system software specialist (Tandem), system software specialist, programmer, computer programmer analyst, telecommunications specialist (network manager), and telecommunications specialist.

⁸The Petitioner, which, as noted above, wishes to exclude all ADP employees from the unit, stipulated that the programmer (statistical quality control analyst) is a professional employee, but took no position as to whether or not the 10 employees holding the other 10 job classifications are professional employees, as contended by the Employer.

⁹The record does not indicate with certainty what positions Begonia held before and after the transfer.

¹⁰However, documents concerning Renew appear to show that she was not selected for the job she bid on in 1988. Thus, it is unclear when she moved to ADP.

¹¹Employees' pay grades, which are represented by a letter and number, are determined based on the Employer's internal job classifications, which differ from those stated herein. Thus, each employee has two different job titles. The Employer's senior resident representative explained, however, that the Employer's internal job classifications and job descriptions, used corporatwide, only generally describe the ADP and warehouse jobs at King's Bay, while the contract with the Navy and job titles pursuant thereto more accurately describe their duties.

office. All the Employer's King's Bay job openings are posted throughout the King's Bay Submarine Base.

The same employee handbook and disciplinary rules apply to both warehouse and ADP employees.

The Employer conducts all employee meetings at King's Bay and holds certain all employee social functions. It is not entirely clear from the record whether or not any non-supervisory meetings are held involving warehouse and ADP employees only (and not umbrella contract employees).

ADP and warehouse employees do not have separately designated parking areas. There is a cafeteria in the building where the ADP group is located, open to all who are on the base. There is also a lunch room in the warehouse.

There are two shifts at ADP, with employees at work from early morning until about 11:30 p.m. Warehouse employees work basically one shift, all of them generally leaving by late afternoon.¹²

Based on the foregoing and the record as a whole, and applying traditional community-of-interest factors, I find that

¹² A flextime experiment is currently underway for warehouse employees. It is unclear whether ADP employees are also currently able to work flextime schedules.

the ADP employees do not share such a strong community of interest with the warehouse employees as to require their inclusion in the petitioned-for warehouse unit. *Esco Corp.*, 298 NLRB 837 (1990).¹³ While the warehouse and ADP operations are functionally integrated, warehouse employees work in a separate location under separate supervision, have different job duties and skills, different work requirements such as the safety shoes and forklift license requirements for warehouse employees only. Permanent interchange between the two groups has been minimal, and work-related contact between the groups is not extensive and to a large extent involves the ADP employees the employer seeks to exclude as professionals. Accordingly, I shall direct an election among warehouse employees only.¹⁴

¹³ Contrary to the Employer's contention, the *A. Harris & Co.*, 116 NLRB 1628 (1956), standard is not applicable to a nonretail operation. *Esco*, supra; *NLRB v. Western Produce*, 839 F.2d 555 (9th Cir. 1988).

¹⁴ In view of my decision to exclude ADP employees, I find it unnecessary to decide which, if any, ADP employees are professional employees.